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NOV 10 2011

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Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Bosco A. Kante, Pro Se,

Plaintiff,

Case No. 1:10-cv-01972-JEC

McCurdy & Candler L.L.C., U.S.  
Bank National Association as Trustee  
for the Certificateholders of Banc of  
America Funding Trust 2007-6,  
Mortgage Electronic Registration  
Systems Inc., and Bank of America  
Home Loans Servicing, L.P. *formerly  
known as Countrywide Home Loans  
Servicing, L.P.*

Defendants

PLAINTIFF'S OBJECTIONS TO  
[DOC 76] REPORT AND  
RECOMMENDATIONS

**PLAINTIFF'S OBJECTIONS TO [DOC 76] REPORT AND  
RECOMMENDATIONS**

OBJECTIONS TO [DOC 76] R&R (Kante vs. McCurdy)

**OBJECTION #1: TRO IN MORGAN WAS GRANTED BASED ON  
NEARLY IDENTICAL CIRCUMSTANCES.**

In *Morgan* the court granted a temporary restraining order based on the issue of defective notice (see below), an issue that was also plead in the instant motion. The Report and Recommendation fails to address this issue [Doc 76,p3].

“It appears that there is sufficient likelihood of success on the merit with respect to the Plaintiffs claim of defective notice with respect to the foreclosure proceeding to grant the relief requested temporarily. The Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction is GRANTED” *Morgan v. Ocwen Loan Servicing, LLC*, No. 1:10-cv-3555-AT (N.D.Ga. Nov 8, 2010, (at Doc 8, p1)),

**OBJECTION #2: MERS CANNOT ASSIGN THE NOTE**

The Report and Recommendation merely cites its previous opinion regarding whether MERS had the authority to assign the Note [Doc 76, p3] citing [Doc 30, at 28, 29], without resolving or explaining the conflict between this opinion and the well reasoned and fully supported opinion in *Morgan*.

Defendants cite O.C.G.A. § 44-14-64 and *Redwine v. Frizzell*, 190 S.E. 789 (Ga. 1937) to support their argument that the purported assignment of the security deed also transferred the promissory note. However, this statute and *Redwine* were authored at a time when the promissory note and the security deed where not commonly separated. Neither support the proposition that a party who has never held the promissory note (MERS) could transfer it by

1 an assignment of the security deed. – *Morgan v. Ocwen Loan Servicing*,  
2 LLC, No. 1:10-cv-3555-AT (N.D.Ga. July 7, 2011),  
3

4 Plaintiff prays that in the interest of justice this court would follow *Morgan* or  
5 explain in a *detailed* manner why it does not follow the *Morgan* decision. Simply  
6 stating that the court will rely on its previously flawed decision without analysis  
7 disrespects Judge Totenberg and the judicial system in general. Furthermore, a  
8 detailed and well reasoned opinion would serve to create some sense certainty in  
9 the outcome of this litigation for all parties and would be a positive step toward a  
10 resolution.  
11

## 12 CONCLUSION

13

14 Based on the foregoing, and the Courts full and careful consideration of the record,  
15 Plaintiff hereby request that this Court enter a preliminary injunction or order  
16 temporarily restraining Defendants McCurdy & Candler, LLC and Defendant US  
17 Bank specifically and all Defendants in general from completing the foreclosure on  
18 Plaintiff's Property.

19 Plaintiff prays that any objection to this motion be held to strict Federal  
20 standards of evidence so that Plaintiff is not denied his Constitutional right to due  
21 process by the court allowing Defendants to present unsubstantiated hearsay and  
22 outright fabrications as is common practice of Defendants in foreclosures.  
23

24 Dated this 8<sup>th</sup> Day of November 2011.  
25  
26  
27  
28

1 **VERIFICATION**

2  
3 I, Bosco Kante, am the Plaintiff in the above-entitled action. I have read the  
4 foregoing and know the contents thereof. The same is true of my own knowledge,  
5 except as to those matters that are therein alleged on information and belief, and as  
6 to those matters, I believe them to be true. I declare under penalty of perjury that  
7 the foregoing is true and correct.

8  
9 DATED: 11/8/11 

10 Bosco A. Kante  
11  
12  
13  
14  
15  
16

17 **CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 7.1D**

18 The undersigned hereby certifies that the foregoing has been prepared using one of  
19 the font and point selections approved in LR NDGa 5.1.  
20

21 **This 8<sup>th</sup> Day of November 2011.**

22   
23  
24

25 Bosco A. Kante, Plaintiff, Pro Se  
26  
27  
28

**CERTIFICATE OF SERVICE**

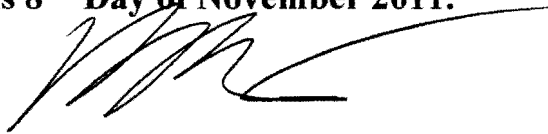
I hereby certify that I have served a true and correct copy of the foregoing  
PLAINTIFF'S OBJECTIONS TO [DOC 76] REPORT AND  
RECOMMENDATIONS on Defendants, by causing a copy of the same to be  
deposited in the United States mail, postage prepaid and properly addressed to  
Defendant as follows:

Lawrence J. Bracken II  
Charlotte M. Ritz  
Cherie A. Phears  
HUNTON & WILLIAMS LLP  
Bank of America Plaza, Suite 4100  
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Atlanta, Georgia 30308-2216

***Counsel for Defendants U.S. Bank  
National Association, Mortgage  
Electronic Registration Systems, Inc.  
and Bank of America Home Loans  
Servicing, LP***

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Decatur, Georgia 30030  
***Counsel for Defendants McCurdy & Candler, LLC***

**This 8<sup>th</sup> Day of November 2011.**



Bosco A. Kante, Plaintiff, Pro Se